

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2861 - SB 2778**

February 21, 2022

**SUMMARY OF BILL:** Expands eligibility to receive an Education Savings Account (ESA) to include students that are zoned to attend or attend a school in the Achievement School District (ASD) and students in local education agencies (LEAs), that during a three-year period preceding September 1, 2025, or thereafter, failed to offer 180 days of in-person learning for a school year due to the COVID-19 pandemic. Decreases, from 25 percent to 16 percent, the required cost differential factor (CDF), and requires the CDF to be reduced in subsequent years. Removes the cost differential factor from the Basic Education Program (BEP) formula beginning in the 2024-25 school year.

**FISCAL IMPACT:**

**Decrease State Expenditures - \$13,215,000/FY23-24  
\$13,035,000/FY24-25**

**Other Fiscal Impact – Elimination of the cost differential factor from the BEP formula may result in a required increase in local expenditures. However, due to multiple unknown factors, a precise fiscal impact cannot be reasonably determined.**

**Assumptions:**

- The proposed expanded ESA eligibility criteria will apply to students that are zoned to attend or attends a school that is in the ASD; or is zoned to attend a school beginning September 1, 2022 and through subsequent years that, in response to the COVID-19 pandemic failed to offer 180 days of in-person instruction.
- Tennessee Code Annotated § 49-6-3004 requires 180 days of classroom instruction for public schools. However, schools may accumulate up to 13 instructional days (through excess instructional time) that may be applied toward meeting instructional time requirements; or, schools may request a waiver from the Commissioner of DOE if the 180 days of classroom instruction is not met.
- It is expected that all public schools will be able to meet the 180 days of classroom instruction beginning in the 2022-23 school year and subsequent years. Therefore, the eligibility criteria related to instructional days will not apply to any schools.
- Public Chapter 506 of the 111<sup>th</sup> General Assembly was signed into law May 24, 2019, and created the ESA Pilot Program.
- On February 6, 2020, Metro Nashville and Shelby County sued the State, contending that Tennessee's ESA Pilot Program violated sections of the Tennessee Constitution.

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- On May 4, 2020, the Chancery Court of Davidson County ruled that the Program violated the Home Rule provision of the state constitution and entered an order preventing the State from advancing the ESA program.
- The Department of Education (DOE) is currently prevented from taking any further action on completed or pending ESA applications while the court order remains in effect.
- According to the DOE website, DOE is seeking reversal of the court's order and hopes to succeed on appeal to allow the Program to start enrollment this school year.
- Public Chapter 506 of the 111<sup>th</sup> General Assembly establishes annual enrollment limits for participation in the Tennessee ESA Pilot Program. Based on the number of eligible students and the participation rate, it is assumed that the yearly cap will be reached every year under current law (see the table below).
- Public Chapter 506 of the 111<sup>th</sup> General Assembly establishes annual enrollment limits for participation in the Tennessee ESA Pilot Program. Based on the number of eligible students and the participation rate, it is assumed that the yearly cap will be reached every year under current law (see the table below).

<b>School Year</b>	<b>Enrollment Limit</b>	<b>Projected Participants*</b>
2022-23	7,500	7,500
2023-24	10,000	10,000
2024-25	12,500	12,500
2025-26	15,000	15,000

\*After the 2025-26 school year, the projected number of participants will be 15,000 each year.

- Because the enrollment limit is expected to be met every year under current law, expanding the number of eligible students will not affect the total number of participants in the Tennessee ESA Pilot Program.
- Tennessee Code Annotated § 49-6-2604 establishes that if, in the application period for a school year, the number of program applications received by DOE exceeds the maximum number of students that may participate in the program for that school year, then DOE shall select students for participation in the program through an enrollment lottery process.
- Based on the projected number of yearly participants, increasing the number of eligible students will increase the number of students in the lottery pool that may be selected for participation in the program.
- Tennessee Code Annotated § 49-3-307(a)(4) calls for the elimination of the CDF in subsequent years as increases are made to the instructional salary and wages component but does not give a sunset date. FY22-23 projections currently utilize 16 percent of the CDF. The precise decrease that would take place in subsequent years under current law is unknown.
- The proposed legislation will eliminate the CDF by the 2024-25 school year, with the percentage of the CDF applied to BEP salaries and benefits decreasing from 16 percent in FY22-23 to 0 percent by FY24-25.

- In FY22-23, 14 LEAs are projected to receive funding from the CDF. The state cost of the CDF is estimated to be \$26,250,000, with a required local match of \$19,345,000.
- These funds are already included in the Governor's recommended FY22-23 state budget.
- Populating the BEP formula with an eight percent reduction in the CDF for two consecutive years results in a total decrease in state expenditures of \$13,215,000 in FY23-24, and \$13,035,000 in FY24-25, the year in which it will be phased out completely. The local match requirements for the CDF will decrease by \$9,591,000 in FY23-24 and by 9,754,000 in FY24-25.
- LEAs currently receiving the CDF may have to shift other local funds in order to maintain current funding levels without the additional CDF funding. This may displace existing planned costs and result in the need for an increase in local expenditures.
- In the event that the court order is reversed, DOE would be required under current law to implement the ESA Pilot Program.
- Any impact on DOE or LEAs resulting from additional ESA eligibility criteria will be not significant.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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